IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2823 OF 1998

Shri Bandu V. Deshpande,)
5, Gloria Building,)
Ground Floor,)
Vivekanand Nagar, Kulagaon (E),)
Badlapur, Dist. Thane) ...Petitioner

Versus

1. The State of Maharashtra)
through the Secretary,)
Revenue and Forest Deptt.)
Mantralaya, Mumbai.)
)
2. The Divisional Commissioner,)
Konkan Division,)
Navi Mumbai.)
)
3. The District Collector,)
Raigad, Alibaug,)
Dist. Raigad.)
)
4. Assistant Collector,)
Panvel Division, Panvel,)
Dist. Raigad.) ...Respondents.

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Shri. N.V. Bandiwadekar, counsel for the Petitioner

Shri. C.R. Sonwane, A.G.P. for Respondents.

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CORAM: DR. S. RADHAKRISHNAN AND
SMT. V.K. TAHILRAMANI, JJ.

DATED: 23RD NOVEMBER, 2005

ORAL JUDGMENT (PER SMT. TAHILRAMANI, J.):-

1. Heard Mr. Bandiwadekar, the learned counsel for the Petitioner and Mr. Sonwane, the learned A.G.P.

for Respondent Nos.1 to 4.

2. The Petitioner is an Ex-army man. He was appointed in the Revenue Department as Talathi by order dated 31.03.1986. He was posted as Talathi in the office of S.L.A.O. Metro Centre (12), Panvel. His services same to be terminated w.e.f. 30.03.1988 by order dated 29.03.1988. The said termination was proceeded by notice dated 01.03.1988. The representation as well as appeal to the higher authorities preferred by the Petitioner came to be rejected. Hence, the Petitioner preferred Original Application No.241 of 1996 before the Maharashtra Administrative Tribunal (hereinafter referred to as "the Tribunal" for the sake of brevity).

3. In the said Original Application, the Petitioner claimed reinstatement with consequential benefits. The Tribunal by judgment and order dated 17.7.1997 held that the termination was illegal and directed the Respondents to reinstate the Petitioner in service within one month. However, the Tribunal held that the Petitioner was not entitled to any backwages i.e. from the date of termination of his service until his reinstatement. The ground for rejecting

the prayer for backwages to the Petitioner was that there was delay and laches on the part of the Petitioner in prosecuting his claim.

4. The Petitioner preferred Review Application, however, the said Review Application came to be dismissed by judgment and order dated 16.01.1998. In the said order, it is observed that the Petitioner had filed Petition belatedly after long lapse of time and hence, period of his absence i.e. from 01.10.1986 to 31.07.1988 should not qualify for payment of backwages. Being aggrieved by the judgments and orders dated 17.07.1997 and 16.01.1998 that the petitioner was not entitled to any backwages, this petition has been preferred by the Petitioner.

5. We have perused the judgments and orders of the Tribunal dated 17.7.1997 and 16.01.1998. It is clear that backwages were denied to the Petitioner on account of delay and laches. The Tribunal has observed that the Petitioner had earlier preferred Original Application bearing No.236 of 1995 in which the subject matter was the same as in Original Application No.241 of 1996. The said Original

Application was disposed of as not pressed by order dated 4.10.1995. Thereafter, the Petitioner filed second Original Application No.241 of 1996 on 26.03.1996. Hence, the Tribunal rejected the Application of the petitioner for backwages on the ground that there was delay and laches on the part of the Petitioner in prosecuting his claim.

6. Mr. Bandiwadekar, has submitted that the earlier Original Application bearing No. 236 of 1995 came to be disposed of by the Tribunal as not pressed as he had not received any instructions from the Petitioner. Mr. Bandiwadekar has further submitted that this was because, in the meanwhile, considering the representation of the Petitioner, the then Hon'ble Revenue Minister Shri. Deshmukh had passed an order to reinstate the Petitioner in service and therefore, the Petitioner did not prosecute the application filed before the Tribunal. However, thereafter the said order of the Hon'ble Minister was not implemented by the lower authorities on one pretext or another, the Petitioner therefore, again approached the Tribunal by filing Original Application No. 241 of 1996. These facts have been clearly stated by the Petitioner in his petition.

There is no affidavit in reply nor these averments have been controverted by the learned A.G.P.

7. Looking to all these facts, we are of the opinion that it cannot be said that the Petitioner was not diligent in prosecuting his claim. Obviously, when an order of reinstatement was passed by the Hon'ble Minister, the Petitioner did not think it necessary to pursue his claim any further before the Tribunal. It was only when the order of reinstatement was not implemented then the Petitioner found it necessary to file the second Original Application. The Petitioner cannot be said to be at fault or that he has not followed the matter diligently. In the facts of the present case, it cannot be said that there was any delay or laches on the part of the Petitioner. In this view of the matter, we find that there is no delay and laches on the part of the Petitioner. Hence, the order of the Tribunal denying the Petitioner any backwages during the period from 01.10.1986 to 31.07.1988 deserves to be set aside and accordingly it is set aside.

8. The petition is made absolute in terms of prayer clause (c). Backwages to be paid to the Petitioner

within a period of twelve weeks from today.

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